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A Hybrid Methodology for Seeking Attorney's Fees in the Eastern District of Virginia's Rocket Docket

As the costs of litigation continue to increase, in large part due to overly broad discovery, the skirmishes in motions to compel are taking on new importance as part of the strategy. Attorneys in large law firms are even developing a subpractice area known as “discovery counsel,” particularly with the explosion of e-discovery over electronically stored information. It is for another article to discuss whether discovery should become so large or complex that practitioners can specialize in it. Thus, it will not come as a surprise to anyone that parallel to this issue is the much sought after, but often illusory, claim for attorney's fees. Clients certainly welcome the opportunity to collect attorney's fees wherever possible to reimburse their own costs in litigation.

The ability to prevail on a claim for attorney's fees requires counsel to plan ahead early in the case. Simply winning a motion and then asking for fees will likely create problems in actually being able to present a justifiable claim. Too often, the twin barriers of poor time-keeping records and inappropriate rates block a successful claim for fees. The case law demonstrates an absolute requirement that counsel and parties understand what they will be required to prove to prevail on a fee claim at the outset of the case.

Introduction

This article analyzes and provides a summary of the modern approach for calculating awards of attorney's fees. Two methods in particular have prevailed since the early 1970s: one developed in the Fifth Circuit Court of Appeals in *Johnson v. Georgia Highway Express, Inc.*,¹ and the other just a year earlier in the Third Circuit Court of Appeals in *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*² The *Johnson* case set forth 12 factors (now called the *Johnson* Factor Test) that provided guidance on the proper considerations for determining attorney's fees. On the other side of the circuit split, the *Lindy Bros.* case pioneered the so-called lodestar method. That decision based the calculation of fees principally on two factors: rate charged and time spent, devis-

ing a method meant to eliminate the uncertainty and what was perceived to be excessively wide discretion of trial court judges when determining fee awards. Over time, the lodestar method has come to be the predominant calculation in federal courts.³

Attorney's fees can be awarded in a wide variety of situations. Many of the main cases articulating the rules for attorney's fee awards focus on fee-shifting provisions of civil rights statutes intended to incentivize competent counsel to represent civil rights litigants who might otherwise go unrepresented, but the holdings set the standard for all awards. In the United States, courts generally abide by the American Rule, whereby each party funds its own legal counsel.⁴ However, there are exceptions in cases of punitive damages, civil rights fee-shifting statutes, and as a type of sanctions, to name a few. Regardless of the situation, courts insist that the party seeking fees be the prevailing party, either in the litigation as a whole or on the relevant motion. Generally a party may not recover attorney's fees with regard to claims on which they were unsuccessful in litigation. Courts even parse out which fees were spent in support of each claim, awarding fees only for claims on which plaintiff prevailed—the “prevailing party” rule.⁵

While settled methods for calculating awards of attorney's fees exist, trial court judges generally calculate the fees in particular cases. They are granted wide latitude to provide reasonable fee awards under an “abuse of discretion” standard of appellate review.⁶ Although judges have considerable discretion, it is not boundless. One of the often-cited virtues of the lodestar method is its objectivity in fee calculation and insistence on accurate billing records and judicial reasoning, which makes for fairer awards and easier appellate review.

This article focuses first on the *Johnson* factor test and its method of operation before turning in greater detail to the lodestar test articulated in *Lindy Bros.* Finally, it will examine the criteria for any enhancements or changes to the award produced by the lodestar calculation with particular attention to the U.S. Supreme Court's recent decision in *Perdue v. Kenny A ex rel. Winn.*⁷



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Johnson Factor Test

In light of a district court decision that failed to “elucidate the factors which contributed to [its] decision and upon which it was based,” *Johnson* set forth 12 factors that should be used to justify awards of attorney’s fees going forward. Although these factors have since been criticized for being too vague and giving trial court judges too much discretion, they were initially developed to cure exactly that problem.

The 12 Factors⁸

Time and Labor Required

When counsel makes claims regarding the time and labor required to complete certain tasks, judges may weigh those claims against their own knowledge of how time-consuming a particular task is. Where more than one attorney bills time, a judge should be cognizant of the possibility of duplicated effort. Judges may also discount billed cleri-

torneys do not exhibit the skill the court believes to be required for their role in the case, it can be a basis for lowering the fee award.

Preclusion of Other Employment Due to Acceptance of Case

If, by accepting the case at bar, an attorney forecloses the possibility of accepting other cases through a conflict of interest or minimizes the amount of time he or she has available to spend on other cases, that may weigh in the court’s mind as it calculates attorney’s fees.

Customary Fee

Courts should consider the customary fee for similar work in the community in which the litigation is occurring. With the understanding that different types of legal work command different rates, the court should use fees for comparable services as a guideline for its awards. The *Johnson* court noted that fees should not, however, drop below the applicable statutory minimum in criminal cases.



cal work—they do not become more valuable simply because they are completed by a lawyer rather than a secretary or paralegal.

Novelty and Difficulty of Questions

In cases where an attorney is faced with matters of first impression, he or she may not have sufficient existing background knowledge to adequately litigate the case. Accordingly, more research is required. Although this attainment of knowledge can be used in later cases, attorneys should not be dissuaded from taking on cases in which the law is unclear and may be developed.

Skill Required to Perform Legal Service Properly

Judges should carefully observe the work product of the attorneys involved in the litigation and ensure that they have the requisite skill to represent their client. The judge may use his own past experience to evaluate the lawyers in the particular case. If the at-

Whether Fee Is Fixed or Contingent

The judge may look to the fee quoted to the client or the percentage of recovery agreed to as an indicator of what the attorney’s fee expectations might have been. However, the court has an obligation to provide a reasonable fee, not necessarily one that the parties agreed to at the outset. Previous arrangements should serve only as a guide. Under no circumstances, however, should a litigant receive a fee greater than what he was contractually bound to pay.

Time Limitations Imposed by Client or Circumstance

When a lawyer takes on priority work that delays his other work, he is entitled to some level of premium. The court notes that this is particularly true in cases where counsel is called in to handle matters at a late stage in the litigation.

Amount Involved and Results Obtained

Any award of attorney's fees should be commensurate with the amount of the damages in the case and the magnitude of the result obtained. If the case monumentally changes the law and has effects far beyond the present litigation, the attorney's fees awarded should be more substantial.

Experience, Reputation, and Ability of Attorney

As a general rule, more experienced attorneys should receive more compensation, but courts should be careful to ensure that the attorney's ability comports with his experience. Experienced but ineffective counsel should not be rewarded, and inexperienced but outstanding counsel should not be punished for their lack of tenure.

"Undesirability" of Case

Attorneys who take on unpopular cases in their community may face hardships because of their desire to help an unpopular civil rights litigant. Because the decision to take on such a case may result in a loss of other business, the attorney should be better compensated to accommodate that loss.

Nature and Length of Professional Relationship with Client

The court should understand that an attorney may vary his fee for similar work in light of the relationship his office has with a client. In determining what would be a reasonable attorney's fee, courts should take note of these relationships and alter their proposed awards accordingly.

Awards in Similar Cases

In reaching a reasonable award amount, courts should consider awards in similar litigation, even if it took place outside the court's jurisdiction. Excessive awards can be prevented if judges are operating within the bounds of other courts' decisions.

Criticism of the *Johnson* Approach

These factors were designed to quell judicial overreach and provide an incentive to attorneys to take difficult cases without also unduly enriching them. Despite *Johnson*'s efforts, some courts have criticized the 12-factor approach for providing an opportunity for judges to exercise exactly the type of limitless decision-making it was designed to prevent. In *Perdue*, for example, Justice Samuel Alito wrote that the 12 factors "gave very little actual guidance to district courts. Setting attorney's fees by reference to a series of sometimes subjective factors placed unlimited discretion in trial judges and produced disparate results."⁹ Although the Supreme Court did not squarely overrule the *Johnson* approach, it effectively abandoned it in *Hensley*.¹⁰ In *Perdue*, the Court reaffirmed its preference for the lodestar model. Although the test was abrogated, many of the factors were subsumed in the lodestar approach, albeit in different form.

Lodestar Model

When it comes to attorney's fees awards, the U.S. Supreme Court has expressed a clear preference for the lodestar approach articulated in *Lindy Bros*. It is intended to be a definitive guide for determining attorney's awards, and in fact the very name "lodestar" means "guide." The goal of the lodestar method as stated by the Court is to simplify the fee award process and make it more objective. Under

lodestar, courts are to calculate attorney's fees by multiplying 1) a reasonable hourly rate by 2) the number of hours reasonably and necessarily spent performing the legal services at issue.¹¹ That basic formulation is composed of just two elements, but each entails considerable analysis of what is and is not "reasonable." Each of those elements will be explored in more detail below.

Among those already listed, the Supreme Court articulates several "virtues" of the approach. First, lodestar looks to the prevailing market rates in the relevant legal community to determine a reasonable rate. The goal is to produce an award that roughly approximates the prevailing rate the attorney would have received if he or she had been representing a paying client billed by the hour in a comparable case. Secondly, lodestar is more readily administrable than the *Johnson* approach. Finally, it is more objective. Lodestar removes considerable discretion from the hands of trial court judges and permits meaningful appellate review with more predictable results both for the court and for the parties.¹²

Where the lodestar method is used, the fee applicant must prove, by clear and convincing evidence, that the fee requested is reasonable.¹³ The Court also states that whatever fee award the lodestar calculation produces has a strong presumption of reasonableness.¹⁴

***Johnson* Factors and the Lodestar Analysis**

Although lodestar is the primary fee calculation method, the court did not eliminate the *Johnson* factors. *Perdue* emphasized that "the lodestar figure includes most, if not all, of the relevant factors constituting a 'reasonable attorney's fee,'" meaning the lodestar calculation incorporates many of the *Johnson* factors. The court in *McAfee v. Boczar* reasoned that the first element of lodestar (reasonable hourly rate) encompasses factor 5 (the customary fee), factor 6 (whether fee is fixed or contingent), factor 9 (the experience, reputation, and ability of the attorney), and factor 4 (the preclusion of other employment due to acceptance of the case). The second major lodestar element (reasonable time spent), incorporates factor 1 (time and labor required), factor 2 (novelty and difficulty of questions), and factor 7 (time limitations imposed by client or circumstances).¹⁵ Thus, the lodestar analysis subsumes and completely accounts for eight of the *Johnson* factors. But this excludes four factors—factor 8 (the amount involved and results obtained), factor 10 (the "undesirability" of the case), factor 11 (the nature and length of the professional relationship with the client), and factor 12 (awards in similar cases).¹⁶

Perhaps due in part to how recently the *Perdue* opinion was issued, courts have not provided a significant amount of guidance regarding how to administer and implement these four remaining *Johnson* factors in conjunction with the lodestar calculation. In *McAfee*, the court did briefly wrestle with the issue, ultimately concluding that the added factors did not warrant a result different from that yielded by the lodestar calculation.¹⁷ In that case, the court considered whether the results obtained (*Johnson* factor 8) warranted a different result, ultimately concluding that the lodestar calculation adequately encompassed the necessary factors. The four remaining factors should not be considered in every case, but if a party has reason to believe they may be relevant, that party can raise the issue for the court's consideration. Because there is a presumption that lodestar yields a reasonable fee on its own, successful invocation of those additional factors will likely be a rare occurrence.

Lodestar Elements

With a basic understanding of the background of the lodestar calculation and the interplay with the *Johnson* factors, we move to a more detailed analysis of each of lodestar's two main elements: reasonable hourly rate and reasonable time spent.

Reasonable Hourly Rate

The starting point under the lodestar method for determining a reasonable hourly rate is to look to the community in which the court sits.¹⁸ This reflects a broader theme of the approach—looking at comparable attorneys doing similar work in the locality. If counsel is from out of town and no local attorney is available for rate comparison because of a unique specialization, then the court must consider two questions to determine whether an exception can be made. First, the court will ask whether services of like quality are truly unavailable in the area, and secondly, whether the party choosing the attorney from elsewhere acted reasonably in making that choice.¹⁹ The burden is on the fee applicant to establish the existence of the exception.

Should no comparable attorney be available in the relevant jurisdiction, the court may then consider rates from other communities. The central question is whether the case presents an issue requiring specialized legal skills not available within the court's jurisdiction. The magnitude of the case alone is usually not sufficient to warrant obtaining remote counsel; the question is limited to area of specialization. In *SunTrust Mortgage, Inc. v. AIG United Guaranty Corp.*, for example, the court held that it was not reasonable for Richmond attorneys to use the rate charged by Gibson Dunn lawyers from Washington, D.C., New York, and Los Angeles, even though those rates were discounted.²⁰ The chief question is what the reasonable rate in Richmond would be. Courts have acknowledged that different categories of legal work have correspondingly different rates, and this is a factor the court considers as well. Addition-

With regard to sanctions, the court's assessment of reasonableness as to the number of hours is limited to the time spent attempting to resolve issues with respect to the sanctionable conduct. Where an investigation into potentially sanctionable conduct is proceeding alongside normal discovery, the time spent in discovery is not reasonable to include in the fee application.

ally, under the lodestar calculation, the reasonableness of the rate is a concept that does not vary depending on whether the hourly rate is assessed for compensatory or punitive purposes.²¹

Reasonable Time Spent

In addition to establishing a reasonable rate, the court must be certain that a reasonable amount of time was spent. Under lodestar, courts look to several factors to make this determination.

Number of Lawyers

One of the factors used to determine whether a reasonable amount of time was spent is to look to the number of lawyers involved in particular tasks. In *SunTrust*, the party challenging the fee application pointed to two examples of alleged overreach. One was a status conference attended by seven lawyers where total fees claimed for the day topped \$40,000. The second was a motion for sanctions hearing during which five partners, four associates, and a paralegal were present, with total fees of more than \$92,000.²² The court held that the number of timekeepers present was excessive and that the fee applicant demonstrated a "lack of billing judgment." Where multiple lawyers are present, fee applicants must be meticulous in demonstrating that every present timekeeper was required to accomplish the task at hand, otherwise some of their time may be deducted.

These two examples demonstrate concerns of not thinking strategically ahead of time with respect to the possible attorney's fee award. Most courts would struggle with justifying nine lawyers to attend a hearing on any issue. It is paramount that lead counsel in cases have the background and ability to staff events in the case in such a manner to justify a fee award.

With regard to sanctions, the court's assessment of reasonableness as to the number of hours is limited to the time spent attempting to resolve issues with respect to the sanctionable conduct. Where an investigation into potentially sanctionable conduct is proceeding alongside normal discovery, the time spent in discovery is not reasonable to include in the fee application.²³

Detailed Time Records

The party seeking award of fees must submit evidence to support the hours worked and "where the documentation of hours is inadequate, the district court may reduce the award accordingly."²⁴ Proper documentation is the key to ascertaining the number of hours reasonably spent on legal tasks. Adequate documentation is found in a time entry which "reflects reliable, contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity."²⁵ Where fee applicants group or lump several tasks together under a single time entry without specifying the time spent on each task, courts may find inadequate information on which to base a review and deduct the time from the award.²⁶ Where courts find the billing information too vague, there are two principal ways of reducing the award. First, they may identify and disallow specific hours that it determines are not adequately documented. Secondly, it may reduce the overall fee award by a fixed percentage or an amount determined based on the court's familiarity with the case, its complexity, and counsel involved.²⁷

Many law firms use a block billing approach. While the client may not mind such an approach in its invoices, the block billing method is problematic in seeking fees under the lodestar calculation. The same can be said of vague time entries. Tasked-based billing records with thorough descriptions best support a claim for attorney's fees in a lodestar calculation.

Under lodestar, courts are particularly reluctant to delve into the realm of trying to interpret unclear billing entries. That kind of guesswork would harken back to the days of using the *Johnson* factors and their accompanying subjectivity. Block billing under lodestar is not strictly forbidden, but it is heavily discouraged. Sloppiness and vagueness in time entry will only result in deductions from the

overall award. In *SunTrust*, the court encouraged parties to open separate billing files for discrete issues on which attorney's fees may later be sought so as to facilitate a clean line between those fees charged in connection with the general litigation and those charged for the insular issue.²⁸

Expenses

In the *SunTrust* case, the court deducted a number of expenses it deemed to be frivolous. For example, overnight deliveries to experts were subtracted from the overall award. The court also determined that certain tasks outsourced to a consulting firm could have been accomplished more inexpensively, and those expenditures were therefore deducted.²⁹ When out-of-town lawyers were consulted and in-town counsel was available, not only could out-of-town counsel's higher rates be deducted, but so could their travel time and any other expenses higher than those that would reasonably be charged by in-town counsel. The lesson to be learned here is similar to the theme running through other deductions. Under lodestar, courts are looking to ensure that counsel is spending its time and resources in the most efficient way possible. Where spending can be construed as extravagant and unnecessary, a court may very well be inclined to reduce those fees in the ultimate award. The guiding principle for firms hoping to collect attorney's fees should be common sense and consistent evaluation of the necessity of its spending decisions.

Fee Enhancements

There is a strong presumption that when applied correctly, the lodestar method yields a reasonable, sufficient award amount.³⁰ However, some courts have tried to, for various reasons, give awards that go above or below the lodestar amount. Traditionally, the Supreme Court has been reticent to allow these moves. Justice Alito noted in *Perdue* that the Court has never approved one of these so-called enhancements.³¹ While the Court has not outright forbade them, it has consistently held that enhancements would be allowed only in rare and exceptional circumstances.³² To justify it, a judge must explain why the lodestar amount did not yield a reasonable fee, setting forth the necessary factors that were not encapsulated in its calculation.³³

The Court has placed great faith in the lodestar calculation insofar as it believes that most, if not all, of the factors necessary to derive a reasonable attorney's fee are accounted for. That does not leave much to be considered after the calculation is complete. Even where fee applicants believed they had a justifiable reason for enhancing the fee, courts have held that those reasons are subsumed in the lodestar calculation. For example, courts have held that the result obtained, good as it may be, does not justify an enhancement because good results are the function of an attorney's superior performance, which is encapsulated in the lodestar calculation.³⁴ Likewise, the novelty and complexity of a case is not grounds for enhancement because those aspects are adequately reflected in the number of hours billed, which is a part of the lodestar calculation.³⁵

Although the Court has never upheld a fee enhancement, it has described three situations in which such an enhancement would be appropriate.³⁶ First, an enhancement may be proper where the method employed in determining the hourly rate does not adequately measure the attorney's true market value as demonstrated in part during the litigation. To provide an objective and reviewable calculation,

a judge who wishes to change an hourly rate on this basis must give specific proof linking the attorney's ability to a prevailing market rate. Second, an enhancement may be justified if an attorney's performance includes an extraordinary outlay of expenses and the litigation is exceptionally protracted. The Court suggests that if an enhancement is granted on this basis, it must be done in a way that is objective and easily reviewed on appeal, such as by applying a standard interest rate to the qualifying outlays of expense. Finally, an enhancement may be appropriate where a delay in the payment of fees results in additional costs assumed by the attorney. This is particularly worthy of an enhancement where the opposing counsel unjustifiably causes the delay.

If judges enhance the amount yielded by the lodestar calculation, it must be for good reason and made explicit or it will likely be overturned as arbitrary on appeal. In *Perdue*, the trial court provided a flat 75 percent enhancement to the award, and the Supreme Court found that because no evidence was offered, it was arbitrary.³⁷ When courts award enhancements on such an impressionistic basis, they undermine the objectivity and reviewable nature that are the hallmarks of the lodestar method.

Conclusion

In cases involving fee-shifting statutes or the award of attorney's fees in general, the federal courts have decidedly shifted from evaluation based on the *Johnson* factors to the lodestar method for calculation. That shift was a marked attempt to bring more objectivity to the fee-calculation process, curb the discretion of district court judges, make the awards more readily reviewable on appeal, and generally produce more predictable results for all parties involved. The lodestar test is simple on its face: multiply the reasonable hours spent by a reasonable rate. The product of that calculation is presumptively reasonable, and because it accounts for most, if not all of the factors to be taken into consideration, enhancements to the lodestar amount are generally not favored, though they are permitted in theory.

The takeaway point for practitioners who may be filing or challenging fee applications is that determining what constitutes a reasonable fee or a reasonable amount of time spent may be more difficult than it first appears. The general principles of objectivity and producing an easily reviewable result guide courts' consideration. Additionally, practitioners should be vigilant in their billing practices and staffing decisions to ensure that money is not being wasted. Under lodestar, courts may easily excise wasted time and expenses from the award. If attorneys want to be fully reimbursed for their time after the litigation has concluded, they need to be cognizant of the somewhat tight timekeeping standards courts impose. Keeping these principles in mind and understanding the lodestar calculation process should yield awards that fully encompass the attorney's expenses or provide grounds to challenge a fee application that is insufficiently thorough. ☉

Endnotes

¹488 F.2d 714 (5th Cir. 1974).

²487 F.2d 161 (3d Cir. 1973).

³*Gisbrecht v. Barnhart*, 535 U.S. 789, 801 (2002) (stating that the lodestar approach has "achieved dominance in the federal courts").

certification, and he did not decide whether Sutter could actually represent a class in the instant action.

¹⁶See 05–CV–2198, 2005 WL 6795061 (D. N.J. Oct. 31, 2005); 9 U.S.C. § 10(a)(4).

¹⁷227 F. App'x 135 (3d Cir. 2007).

¹⁸See *Stolt-Nielsen*, 130 S. Ct. at 1775–76.

¹⁹*Oxford Health*, 2013 U.S. LEXIS 4358, at *6–7.

²⁰*Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 220 (3d Cir. 2012).

²¹*Id.* at 224.

²²*Oxford Health*, 2013 U.S. LEXIS 4358, at *6 (internal quotation marks, citations, and modifications omitted).

²³*Id.* at *13.

²⁴*Id.* at *13–14.

²⁵Compare *Stolt-Nielsen*, 130 S. Ct. at 1765 with *Oxford Health*, 2013 U.S. LEXIS 4358, at *5.

²⁶*Stolt-Nielsen*, 130 S. Ct. at 1766.

²⁷*Stolt-Nielsen*, 130 S. Ct. at 1775.

²⁸*Id.*

²⁹Moreover, as Justice Ginsburg pointed out in her *Stolt-Nielsen* dissent, the *Stolt-Nielsen* majority's analysis of the arbitrators' opinion is less than airtight.

The Court's characterization of the arbitration panel's decision as resting on “policy,” not law, is hardly fair comment, for “policy” is not so much as mentioned in the arbitrators' award. Instead, the panel tied its conclusion that the arbitration clause permitted class arbitration to New York law, federal maritime law, and decisions made by other panels pursuant to Rule

3 of the American Arbitration Association's Supplementary Rules for Class Arbitrations.

Furthermore, the arbitrators “construed the broad arbitration clause ... and ruled, expressly and only, that the clause permitted class arbitration. The Court acts without warrant in allowing *Stolt-Nielsen* essentially to repudiate its submission of the contract-construction issue to the arbitration panel, and to gain, in place of the arbitrators' judgment, this Court's *de novo* determination.” *Id.* at 1780–81 (Ginsburg, J., dissenting).

³⁰*Oxford Health*, 2013 U.S. LEXIS 4358, at *13–14 (describing the basis for the *Stolt-Nielsen* decision).

³¹*Id.* at *15–16.

³²To make matters worse, the Court further complicated this issue by explicitly reserving whether and to what extent class arbitration questions are questions of “arbitrability,” which “are presumptively for courts to decide,” and which “[a] court may therefore review ... *de novo* absent clear and unmistakable evidence that the parties wanted an arbitrator to resolve the dispute.” In leaving open the arbitrability issue, the Court intimated that explicit contractual language may be necessary to permit an arbitrator to decide whether class-wide arbitration is contractually permitted. A clear statement is a far cry from the broad language deemed sufficient in *Oxford Health*. *Id.* at *9–10 n.2 (quoting *Green Tree*, 539 U.S. at 452, and *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 649 (1986) (internal quotation marks, citations, and modifications omitted)).

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⁴See *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245 (1975) (considering whether the requested fee award fell within any of the exceptions to the general rule that “the prevailing party may not recover attorneys' fees as costs or otherwise”).

⁵*Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

⁶*Carter v. Sedgwick Cnty., Kan.*, 36 F.3d 952, 956 (10th Cir. 1994). 7559 U.S. 542 (2010).

⁸*Johnson*, 488 F.2d at 717–19.

⁹*Perdue*, 559 U.S. 542, 130 S. Ct. 1662, 1672 (2010) (quoting *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563 (1986)).

¹⁰*Hensley*, 461 U.S. at 440.

¹¹*Lindy Bros. Builders, Inc.*, 487 F.2d at 166.

¹²*Perdue*, 559 U.S. 542, 130 S. Ct. at 1672.

¹³*Hensley*, 461 U.S. at 436.

¹⁴*Perdue*, 559 U.S. 542, 130 S. Ct. at 1673.

¹⁵*McAfee v. Boczar*, 906 F. Supp. 2d 484, 492 (E.D. Va. 2012).

¹⁶*Id.*

¹⁷*Id.* at 504–05.

¹⁸*Nat'l Wildlife Fed'n. v. Hanson*, 859 F.2d 313, 317 (4th Cir. 1988).

¹⁹*Id.*

²⁰*SunTrust Mortgage, Inc. v. AIG United Guar. Corp.*,

3:09CV529, 2013 WL 870093, at *6 (E.D. Va. Mar. 7, 2013). See also *Kim v. U.S. Bank, N.A.*, 2013 WL 3973419 (E.D. Va. Jul. 29, 2013).

²¹*In re Abrams & Abrams, P.A.*, 605 F.3d 238, 244 (4th Cir. 2010).

²²*SunTrust*, 3:09CV529, 2013 WL 870093, at *10.

²³*Id.*

²⁴*Hensley*, 461 U.S. at 433.

²⁵*Guidry v. Clare*, 442 F. Supp. 2d 282, 294 (E.D. Va. 2006) (quoting *E.E.O.C. v. NutriSys, Inc.*, 685 F. Supp. 568, 573 (E.D. Va. 1988)).

²⁶*Id.*

²⁷*Id.*

²⁸*SunTrust*, 3:09CV529, 2013 WL 870093, at *13. See also *Project Vote/Voting for America, Inc. v. Long*, 887 F. Supp. 2d 704 (E.D. Va. 2012).

²⁹*Id.* at *14.

³⁰*Perdue*, 559 U.S. 542, 130 S. Ct. at 1667.

³¹*Id.* at 1673.

³²*Id.*

³³*Id.*

³⁴*Id.* at 1674.

³⁵*Id.* at 1673.

³⁶*Id.* at 1668.

³⁷*Id.* at 1675.